

Unofficial Draft Copy

As of: June 30, 2008 (2:47pm)

LC5014

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act An Act clarifying the authority of local governments to require public water supply systems and public sewer and wastewater systems for subdivisions; amending sections 76-3-504, and 76-3-511, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park

and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the

land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been

initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no

more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) In implementing the provisions of subsection (1)(g)(iii), the governing body may, as provided in 76-3-511, require public water systems or public sewer systems.

~~(3)~~(4) The governing body may establish deadlines for submittal of subdivision applications."

{ Internal References to 76-3-504:

50-60-901x	50-60-901x	76-3-511x	76-3-511x
76-3-601x	76-3-604x	76-3-604x	76-3-605x
76-3-609x	76-3-615x		

Section 2. Section 76-3-511, MCA, is amended to read:

"76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference

comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding,

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as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation."

{ Internal References to 76-3-511:
76-3-501x 76-3-504x 76-3-622x }

- END -

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As of: June 30, 2008 (7:04am)

LC5012

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for the issuance of a certificate of water right for aquatic resource activities carried out by the department of transportation in compliance with and as required by the federal clean water act of 1977; amending sections 85-2-102, and 85-2-306, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; ~~or~~

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368; or

(h) in the case of the department of transportation, aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387, as provided in 85-2-306(9).

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or

allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; ~~or~~

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368; or

(g) a use of water by the department of transportation for aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387, as provided in 85-2-306(9).

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the

ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created

under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can

be obtained or through which it flows under natural pressures or is artificially withdrawn."

{Internal References to 85-2-102:

82-4-355x

85-2-141x

85-2-340x

85-2-506x}

Section 2. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a)

Except as provided in ~~subsection~~ subsections (1)(b) and (9)(a), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days

prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

- (a) according to a permit received pursuant to 85-2-508; or
- (b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose

priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refileing a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing

right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to

modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) (a) The department of transportation is not required to obtain a permit before appropriating ground water or diffuse surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387, if the appropriation is to recreate a functional a wetland with the intent to substantially replicate the predisturbance conditions by filling in or removing constructed ditches, drains, or similar structures.

(b) (i) Within 30 days of completion of the appropriation for beneficial use, the department of transportation shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review

the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(iv) The certificate of water right must document the proposed number of applied for credits attached to the wetland as assigned under the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof that the aquatic resource activities were carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387 and proof of a possessory interest of the place of use. The original of the certificate must be sent to the department of transportation. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(d) To define the nature and extent of the water right the certificate of water right must state:

(i) the date of the priority of the right;

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(ii) the purpose for which the water included in the right is used;

(iii) the place of use and description of the land to which the right is appurtenant;

(iv) the number of applied for credits attached to the wetland as assigned under the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387 and certified to the department by the department of transportation.

(e) In addition to any remedy available to a certificate of water right holder, the issuance of a certificate of water right under this subsection (9) entitles the department of transportation to protect the credits set forth in the certificate of water right against any appropriation of water in any subsequent permit or change authorization proceeding conducted under this chapter. Proof of the diminishment of credits is prima facie proof that water is not reasonably legally available under 85-2-311(1)(a)(ii) and of adverse effect under 85-2-402 in any proceeding conducted under this chapter.

(f) The purpose of a certificate of water right issued under this subsection (9) may not be changed."

{ Internal References to 85-2-306:

85-2-102*x	85-2-113x	85-2-236x	85-2-302x
85-2-322x	85-2-330x	85-2-341x	85-2-343x
85-2-401x	85-20-601 x	85-20-901 x	85-20-901x
85-20-901x	85-20-901 x	85-20-901x	85-20-901x
85-20-901	85-20-901x	85-20-901x	85-20-901x
85-20-901x	85-20-901x	85-20-901 x	85-20-901x
85-20-901x	85-20-901x	85-20-901x	85-20-901x
85-20-901x	85-20-901x	85-20-901x}	

NEW SECTION. **Section 3.** {standard} **Effective date.** [This

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act] is effective on passage and approval.

- END -

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As of: February 27, 2008 (3:42pm)

LC5009

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring that a discharge permit must be obtained, if necessary, for an aquifer recharge plan or a mitigation plan in a closed basin; amending sections 75-5-401, 75-5-410, 85-2-362, and 85-2-364, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits -- ground water

exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage,

or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of

the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4) (a) through (4) (c).

(7) Except for subsection (5) (h), the exemptions in subsection (5) do not apply to the permits required pursuant to 75-5-410.

~~(7)~~(8) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

~~(8)~~(9) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under

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As of: February 27, 2008 (3:42pm)

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subsections (1) through (4).

~~(9)~~(10) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

{ Internal References to 75-5-401:

50-2-116x	75-5-308x	75-5-311*x	75-5-318x
75-5-405x	75-5-516x	75-5-516x	75-5-605x}

Section 2. Section 75-5-410, MCA, is amended to read:

"75-5-410. ~~Water quality of return flows and discharges associated with aquifer recharge or mitigation plan -- minimum requirements.~~ (1) A person who proposes to ~~use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge~~ or mitigation plan pursuant to 85-2-362 shall obtain, if necessary, a current permit pursuant to this chapter.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are

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used for aquifer ~~injection~~ recharge must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

~~(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.~~

~~(5)(2) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project~~ "aquifer recharge" and "mitigation" have the meanings defined in 85-2-102."

{ Internal References to 75-5-410:

85-2-361x	85-2-361x	85-2-361x	85-2-361x
85-2-362a	85-2-368x	85-2-370x	85-2-370x}

Section 3. Section 85-2-362, MCA, is amended to read:

"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; ~~and~~

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and

(h) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, ~~and pursuant to~~ as required by 75-5-410 and 85-2-364;

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

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(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

{Internal References to 85-2-362:

75-5-410x	75-5-410x	85-2-102	85-2-102x
85-2-360	85-2-360x	85-2-360x	85-2-361x
85-2-368*	85-2-369x	85-2-370* x	85-2-370*x}

Section 4. Section 85-2-364, MCA, is amended to read:

"85-2-364. Department permit coordination -- requirements for aquifer recharge or mitigation plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

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(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department."

{Internal References to 85-2-364:

85-2-361x	85-2-361x	85-2-361x	85-2-361x
85-2-362x	85-2-368x	85-2-370x	85-2-370x}

- END -

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Unofficial Draft Copy

As of: April 7, 2008 (8:31am)

LC5007

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing a ground water investigation program; providing a contingent appropriation for the program; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Ground water investigation program**

-- **advisory committee.** (1) The Montana bureau of mines and geology shall develop and implement a ground water investigation program for the purpose of collecting and compiling ground water and aquifer data. The program shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The program shall develop a monitoring plan for each subbasin for which a report is prepared.

(2) The ground water assessment steering committee, established by 2-15-1523, shall prioritize subbasins for investigation based upon current and anticipated growth of agriculture, industry, housing, and commercial activity. Permit applications for the development of surface water or ground water may be taken into account in prioritizing subbasins.

NEW SECTION. **Section 2. Appropriation.** There is

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As of: April 7, 2008 (8:31am)

LC5007

appropriated from the state general fund \$1.2 million to the Montana bureau of mines and geology for developing and implementing the ground water investigation program described in [section 1].

DATA: An average of 415 water permit applications have been received over the past 7 years, but numbers are declining with 205 applications estimated for 2009.

An average of 1053 subdivision applications consisting of an average of 6,733 lots has been filed over the past 5 years.

An average of 5,469 wells have been drilled over the past 7 years with an average total footage drilled of 936,283.

NEW SECTION. **Section 3. Contingent voidness.** If House Bill No. 2 is passed and approved and contains an appropriation of at least \$1.2 million for the ground water investigation program described in [section 1], then [section 2] is void.

NEW SECTION. **Section 4. {standard} Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 1].

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective July 1, 2009.

- END -

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As of: April 7, 2008 (8:31am)

LC5007

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Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing a water right permit application process for a subdivision water system; defining terms; allowing rulemaking; amending sections 85-2-102, 85-2-311, 85-2-360, 85-2-361, 85-2-362, 85-2-363, 85-2-369, and 85-2-370, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Application for subdivision water system in closed basins - process - judicial review.** (1) An applicant who proposes a use of ground water for a subdivision water system in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment conducted pursuant to 85-2-361 with an analysis of net depletion, a mitigation plan or aquifer recharge plan to offset the net depletion, an application for a beneficial water use permit or permits, an application for a change in appropriation right or rights, if necessary, and any other information necessary to satisfy the requirements of this section.

(2) An application processed under this section is not subject to the provisions of 85-2-307 through 85-2-311 or 85-2-363.

(3) The department shall issue a permit and any change in

appropriation right that is part of a mitigation plan provided that:

(a) the department determines that any net depletion will be offset with an aquifer recharge or mitigation plan that meets the requirements of 85-2-362 and any change in appropriation right meets the requirements of 85-2-402;

(b) the applicant agrees as a condition of the permit that each connection to the subdivision water system will include a water use meter;

(c) the applicant agrees as a condition of the permit that the water use by each connection to the subdivision water system will be limited to ??? gpm and not more than ???? acre feet per year. **(current exempt well is 35 gpm and 10 acre feet per year)**.

(d) the applicant agrees as a condition of the permit that the use of wells exempt from permitting requirements pursuant to 85-2-306 will not be allowed in the area served by the public water system; and

(e) the applicant grants the Montana bureau of mines and geology a right of way to access for monitoring each well in a subdivision water system permitted pursuant to this section.

(f) the applicant provides a plan to monitor and enforce the uses of water as limited by this section and any permit conditions.

(4) Wells permitted pursuant to this section may be included in the ground water monitoring program pursuant to 85-2-906.

(5) A determination by the department under this section is subject to judicial review. Judicial review must be conducted by

a court without a jury and is limited to the administrative record. A court may reverse or modify the department's ruling if substantial rights of an aggrieved party have been prejudiced because the ruling is:

- (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the department;
 - (c) affected by error of law;
 - (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion; or
 - (e) is not supported by reasonable evidence
- (6) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

Section 2. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Appropriate" means:
 - (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
 - (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
 - (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;
 - (d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to

agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the

form requiring the information have been filled in with the required information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Domestic purposes" means those water uses common to a household including:

(a) food preparation;

(b) washing;

(c) drinking;

(d) bathing;

(e) waste disposal;

(f) cooling and heating; and

(g) garden and landscaping irrigation up to ??? acres.

~~(12)~~(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(13)~~(14) "Ground water" means any water that is beneath the ground surface.

~~(14)~~(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(15)~~(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

~~(16)~~(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

~~(17)~~(18) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303, ~~and~~ 85-2-306 through 85-2-314, and [section 1].

~~(18)~~(19) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(19)~~(20) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(20)~~(21) "Salvage" means to make water available for beneficial use from an existing valid appropriation through

application of water-saving methods.

~~(21)~~(22) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(23) "Subdivision water system" means an appropriation of water from the same source aquifer by two or more wells or developed springs that are physically combined into the same system for domestic purposes that is estimated to supply at least ??? acre feet of water per year. (1 house and 1/4 acre = .73 acre feet) and not more than 3,000 acre feet per year. (Subject to legislative approval 85-2-317)

~~(22)~~(24) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(23)~~(25) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(24)~~(26) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(25)~~(27) "Water division" means a drainage basin as defined in 3-7-102.

~~(26)~~(28) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(27)~~(29) "Water master" means a master as provided for in Title 3, chapter 7.

~~(28)~~(30) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(29)~~(31) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ Internal References to 85-2-102:

82-4-355x

85-2-141x

85-2-340x

85-2-506x}

Section 3. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant

proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and

operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title

7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and

Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the

application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee,

attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) ~~For~~ Except for an application processed under [section 1], for an application for ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section."

{ Internal References to 85-2-311:

85-2-102* a	85-2-141x	85-2-308x	85-2-312x
85-2-313x	85-2-317x	85-2-322x	85-2-323x
85-2-360a	85-2-363a	85-2-363x	85-2-363x
85-2-363x	85-2-708x	85-2-708x	85-20-1301???
85-20-1401???			

Section 4. Section 85-2-360, MCA, is amended to read:

"85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 must be accompanied by a hydrogeologic assessment that has been conducted pursuant to 85-2-361 to predict whether the proposed appropriation right will result in a net depletion of surface water and must be accompanied by a plan as provided in 85-2-362, if necessary.

(2) If the hydrogeologic assessment conducted pursuant to 85-2-361 predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.

(3) (a) ~~If~~ Except as provided in (6), if the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in 85-2-363.

(b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment, the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not more than \$1,000 for each day of the violation.

(4) ~~If~~ Except as provided in (6), if the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3)(a), the department may proceed to process the application pursuant to 85-2-363 if, in addition to other applicable criteria, the applicant complies with 85-2-362.

(5) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new

appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(6) If the applicant proposes to use the water for a subdivision water system, the application may be processed pursuant to [section 1].

(7) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department."

{ Internal References to 85-2-360:

85-2-102x	85-2-102x	85-2-311x	85-2-311a
85-2-330x	85-2-336x	85-2-341x	85-2-343x
85-2-344x	85-2-360x*	85-2-361x*	85-2-364x
85-2-364x	85-2-368*x	85-2-369x*	85-2-370*a
85-2-370a*}			

Section 5. Section 85-2-361, MCA, is amended to read:

"85-2-361. Hydrogeologic assessment -- definition -- minimum requirements. (1) (a) For the purposes of 85-2-360 through 85-2-362 and [section 1], "hydrogeologic assessment" means a report for the project for or through which water will be put to beneficial use, the point of diversion, and the place of use that describes the geology, hydrogeologic environment, water quality with regard to the provisions of 75-5-410 and 85-2-364, and predicted net depletion, if any, including the timing of any

net depletion, for surface water within the area described in subsection (2)(a)(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount diverted for like beneficial uses;

(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and

(iii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:

(i) the area or estimated area of ground water that will be affected, not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the

water court, unless the applicant chooses to expand the boundaries;

(ii) the geology in the area identified in subsection (2)(a)(i), including stratigraphy and structure;

(iii) the parameters of the aquifer system within the area identified in subsection (2)(a)(i) to include, at a minimum, estimates for:

(A) the lateral and vertical extent of the aquifer;
(B) whether the aquifer is confined or unconfined;
(C) the effective hydraulic conductivity of the aquifer;
(D) transmissivity and storage coefficient related to the aquifer; and

(E) the estimated flow direction or directions of ground water and the rate of movement;

(iv) the locations of surface waters within the area described in subsection (2)(a)(i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;

(v) evidence of water availability; and

(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2)(a)(i).

(b) A hydrogeologic assessment must also include a water quality report that includes:

(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as

areas of subsidence, along with a plan to mitigate any conditions or impacts;

(ii) other water quality information necessary to comply with 75-5-410 and 85-2-364; and

(iii) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.

(4) The hydrogeologic assessment, the model if provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(5) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section."

{ *Internal References to 85-2-361:*

85-2-360x	85-2-360 x	85-2-360*x	85-2-361x*
85-2-362x	85-2-368x*	85-2-369*x	85-2-370x*
85-2-370x*}			

Section 6. Section 85-2-362, MCA, is amended to read:

"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) Am Except as provided in [section 1], an applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; and

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) ~~The~~ Except for an application processed pursuant to [section 1], the department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator, or an

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appropriation right issued pursuant to [section 1], must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

{ Internal References to 85-2-362:

75-5-410x	75-5-410x	85-2-102x	85-2-102x
85-2-360 x	85-2-360 x	85-2-360x	85-2-361x
85-2-368x*	85-2-369x	85-2-370a*	85-2-370a*}

Section 7. Section 85-2-363, MCA, is amended to read:

"85-2-363. Process for combining decisions on ground water permit applications in closed basins. (1) ~~An~~ Except for applications processed under [section 1], an applicant for a permit to appropriate ground water in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment with an analysis of net depletion, a mitigation plan or aquifer recharge plan if required, an application for a beneficial water use permit or permits, and an application for a change in appropriation right or rights if necessary.

(2) The department shall review the application to determine if it is correct and complete under the process and requirements of 85-2-302.

(3) (a) Once an application has been determined to be correct and complete, the department shall prepare a notice and publish it as provided under 85-2-307.

(b) If no valid objection to the application is filed and the applicant proves that the criteria of 85-2-311 or 85-2-402,

if necessary, have been satisfied, the application must be granted or approved in a modified form or upon terms, conditions, or limitations specified by the department.

(c) If no valid objection to the application is filed and the applicant has not proved that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be denied.

(d) If a valid objection to the application is filed, the department shall proceed to process the application pursuant to 85-2-308 through 85-2-311. If the applicant satisfies the criteria of 85-2-311 or 85-2-402, if necessary, and proves by a preponderance of the evidence that net depletion, if any, will not adversely affect a prior appropriator based on the applicant's mitigation plan or aquifer recharge plan, the department shall issue the permit."

{ Internal References to 85-2-363:

85-2-360 x 85-2-360x 85-2-368*x 85-2-370*x
85-2-370*x }

Section 8. Section 85-2-369, MCA, is amended to read:

"85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use. (1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right pursuant to 85-2-360 through 85-2-362 and [section 11] must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of

mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source."

{ Internal References to 85-2-369:
85-2-302x }

Section 9. Section 85-2-370, MCA, is amended to read:

"85-2-370. Rulemaking. The department may adopt rules to implement the provisions of 75-5-410, 85-2-360 through 85-2-364, [section 1], and 85-2-368. The rules must be oriented toward the protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of 75-5-410, 85-2-360 through 85-2-364, [section 1], and 85-2-368."

{ Internal References to 85-2-370: None. }

NEW SECTION. **Section 10. {standard} Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing the sustainable development revolving fund program, providing definitions, allowing for rulemaking; authorizing bonds and the creation of debt; establishing an advisory committee; amending section 17-7-502, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Sustainable Development Revolving Fund Act".

NEW SECTION. **Section 2. Statement of purpose -- findings.**

(1) The purpose of [sections 1 through 13] is to help facilitate residential development in Montana by offering an incentive for improvements to existing public water and sewer systems to provide additional service and the implementation of public water and sewer systems in new subdivisions instead of individual water wells and sewer systems.

(2) The legislature finds that:

(a) the use of individual water wells exempt from permitting and individual septic systems is appropriate in many parts of rural Montana;

(b) in high-growth areas, the use of public water and sewer systems in subdivisions is preferable to individual wells and septic systems in order to protect water quality and the holders of senior water rights;

(c) extending existing public systems or building new public systems is expensive;

(d) it may be difficult for local governments to finance the improvements to public systems and other public entities may not be able to afford to build new public systems; and

(e) it is in the best interests of the state to provide a revolving loan fund to help public entities pay for the building or extension of public water and sewer systems instead of using single wells and septic systems.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Applicant" means an incorporated city or town, a county, a consolidated local government, a tribal government, a

county or multicounty water or sewer district, or an authority as defined in 75-6-304.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public system, including but not limited to:

- (a) engineering, financing, and other fees;
- (b) interest during construction; and
- (c) construction.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Intended use plan" means the annual plan adopted by the department that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(14) "Program" means the sustainable development revolving fund program established by [sections 1 through 13].

(2) "Public system" means improvements to existing public water or sewer systems in order to provide additional service or new public water or new public sewer systems proposed to be built by an applicant that will serve at least 15 service connections used by year-round residents of the area served by the system or will regularly serve at least 25 year-round residents.

(17) "Revolving fund" means the sustainable development revolving fund established by [section 4].

NEW SECTION. Section 4. Sustainable development revolving

fund program. There is a program under which the state may provide financial assistance to public systems. The program must be administered in accordance with [sections 1 through 13].

NEW SECTION. **Section 5. Rulemaking authority.** The department may adopt rules:

- (1) prescribing the form and content of applications for loans;
- (2) governing the application of the criteria for awarding loans;
- (3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;
- (4) establishing ceilings on the amount of individual loans to be made if considered appropriate and necessary for the successful administration of the program;
- (5) to maintain the financial integrity of the program; and
- (6) implementing [sections 1 through 13].

NEW SECTION. **Section 6. Revolving fund.** (1) There is established in the state treasury a separate account designated as the sustainable development revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under [sections 1 through 13]. There are established within the revolving fund a state allocation account, an administration account, and an investment income account.

- (2) There must be credited to:

(a) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to [section 13], less any proceeds deposited to the administration account as provided in subsection (1)(c);

(ii) money appropriated by the legislature; and

(iii) other available funds;

(c) the administration account, an amount not to exceed 4% of the:

(i) the proceeds of bonds of the state issued pursuant to [section 12] as the department determines necessary;

(ii) money appropriated by the legislature; and

(iii) other available funds.

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made under [sections 1 through 13] must be funded and disbursed from the state allocation account by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [section 12] and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as

provided in the resolution or trust indenture authorizing the bonds.

(4) The department may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with [sections 1 through 13].

NEW SECTION. **Section 7. Use of revolving fund.** (1) Money in the revolving fund may be used to:

(a) make loans for public systems as provided in [sections 1 through 13];

(b) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(c) pay reasonable administrative costs of the program, not to exceed 4% of the:

(i) proceeds of bonds of the state issued pursuant to [section 12] as the department determines necessary;

(ii) money appropriated by the legislature; and

(iii) other available funds.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business.

(2) Money in the fund may not be used for expenditures

related to monitoring, operation, and maintenance.

NEW SECTION. **Section 8. Use of funds - statutory appropriation.** Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of providing financial assistance to public systems.

NEW SECTION. **Section 9. Evaluation of projects and loan applications.** The department shall evaluate projects and loan applications. In evaluating projects and applications, the following factors must be considered:

- (1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;
- (2) the financial capacity of the applicant;
- (3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;
- (4) the total financing of the project to ensure completion;
- (5) the viability of the public system;
- (6) the ability of the applicant to pay the costs of the project without the requested financial assistance;
- (7) the total amount of loan funds available for financial assistance in the revolving fund;
- (8) the total amount requested by other applications that have been received or that are likely to be received;
- (9) the ranking of the project on the priority list in the intended use plan; and
- (10) any other criteria that the department determines to be

appropriate, considering the purposes of the program.

NEW SECTION. **Section 10. Applications for loans.** (1) The department shall establish loan application procedures, including forms for the applications. Each application for a loan must include:

- (a) a reasonably detailed description of the project;
- (b) a reasonably detailed estimate of the cost of the project;

- (c) a timetable for the construction of the project and for payment of the cost of the project;

- (d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

- (e) the source or sources of revenue proposed to be used to repay the loan;

- (f) a current financial statement of the applicant showing assets, liabilities, revenue, and expenses;

- (g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public system and, if so, a description of the loans, notes, bonds, or other obligations;

- (h) a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the applicant and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

- (i) engineering reports;
- (ii) economic feasibility studies; and
- (iii) legal opinions.

NEW SECTION. **Section 11. Loan conditions.** (1) Upon approval of an application by the department, the department may lend amounts on deposit in the revolving fund to a public system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public system or the applicant's financial authority;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(e) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department to fulfill its responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public systems established by the department of environmental quality; and

(i) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) The department may determine the interest rate to ensure that the interest payments on the loans will be sufficient to pay for administrative costs and other reasonable costs of the program.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department, may

impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the applicant. Administrative fees may be deposited:

(a) in a special administrative costs account that the department may create for that purpose outside the revolving fund provided for in [section 6]; or

(b) in the administrative account provided for in [section 6]. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

NEW SECTION. Section 12. Authorization of bonds -- allocation of proceeds. (1) The board of examiners is authorized, upon request of the department, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are allocated to the state allocation account or the administration account of the revolving fund, as provided in [section 6]. Any premium and accrued interest and bond proceeds to be used to pay interest

must be deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and may be used for the purposes authorized in [sections 1 through 13] without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds,

to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer or the department, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to [sections 1 through 13] must be filed with the secretary of state.

NEW SECTION. **Section 13. Priority -- intended use plan -- advisory committee.** (1) Priority for loans must be given to applicants that propose improvements to existing public systems in order to provide additional service.

(2) The department shall prepare an annual intended use plan.

(3) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated under [section 7] for the annual fiscal period following publication

of the intended use plan.

(4) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (3) and shall provide public notice and opportunity to comment on the draft document.

(5) (a) Following the public comment period provided for in subsection (4) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;
(ii) one member from the Montana association of counties;
(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the legislature. One member must be from the house of representatives and one from the senate, and subject to 5-5-234, one must be from the majority party and one must be from the minority party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for

in subsection (4).

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409;

23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503;
41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623;
53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518;
82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 90-9-306;
[section 8]; and section 2, Chapter 6, Special Laws of May 2007.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant

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to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 10, Ch. 6, Sp. L. May 2007, the inclusion of section 2, Chapter 6, Special Laws of May 2007, terminates July 1, 2008; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 is effective July 1, 2008, and terminates June 30, 2009.) "

{ Internal References to 17-7-502:

2-17-105	5-11-120	5-11-407	5-13-403
7-4-2502	10-1-1202	10-1-1303	10-2-603
10-3-203	10-3-310	10-3-312	10-3-312
10-3-314	10-4-301	15-1-111	15-1-121
15-1-218	15-23-706	15-31-906	15-35-108
15-36-332	15-37-117	15-39-110	15-65-121
15-70-101	15-70-369	15-70-601	16-11-509
17-1-508	17-3-106	17-3-212	17-3-222
17-3-241	17-6-101	17-7-304	17-7-501
18-11-112	19-3-319	19-6-404	19-6-410
19-9-702	19-13-604	19-17-301	19-18-512
19-19-305	19-19-506	19-20-604	19-20-607
19-21-203	20-8-107	20-9-534	20-9-622
20-26-1503	20-26-1503	22-3-1004	23-4-105
23-4-202	23-4-204	23-4-302	23-4-302
23-4-304	23-5-306	23-5-409	23-5-612
23-7-301	23-7-402	37-43-204	37-51-501
39-71-503	41-5-2011	42-2-105	44-1-504
44-12-206	44-13-102	50-4-623	53-1-109
53-6-703	53-24-108	53-24-108	53-24-206
60-11-115	61-3-415	69-3-870	75-1-1101
75-1-1101	75-5-1108	75-6-214	75-10-622
75-11-313	77-1-108	77-2-362	80-2-222
80-4-416	80-5-510	80-11-518	82-11-161
87-1-513	90-1-115	90-1-115	90-1-205
90-3-1003	90-9-306}		

NEW SECTION. **Section 15. ???Funding???** A creation of state debt would requires a 2/3 vote of each house and would need a repayment funding source. A general fund appropriation could provide a lump sum for the program. Other options???

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NEW SECTION. Section 16. {standard} Codification

instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 14].

- END -

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As of: June 30, 2008 (2:55pm)

LC5021

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising water enforcement laws; allowing for the limited appointment of water masters as special masters in district court proceedings; requiring that protection of prior appropriators be given priority in judicial enforcement considerations; making the pursuit of voluntary compliance optional; amending sections 3-7-311, and 85-2-114, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-311, MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) Subject to the approval of the chief water judge, a water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant

to 85-2-114 (1) and (3) and 85-5-301."

{ *Internal References to 3-7-311: None.* }

Section 2. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, ~~after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),~~ petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the

department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3)(a) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(b) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation without being requested to do so by the department.

(4) The county attorney or the attorney general may prosecute under 85-2-122(1) or bring an action under 85-2-122(2) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).

(5) A county attorney who takes action pursuant to subsections (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(4)(7) After considering the provisions of subsection (6), ~~The~~ the department ~~shall~~ may attempt to obtain voluntary compliance through warning, conference, or any other appropriate

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means before petitioning the district court under subsection (1).
~~The attempts~~ An attempt to obtain voluntary compliance under this
subsection must extend over a period of at least 7 days and may
not exceed 30 working days."

{ *Internal References to 85-2-114:*
85-2-122x 85-2-122x }

- END -

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As of: June 30, 2008 (2:53pm)

LC5020

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act allowing the department of natural resources and conservation to issue a preliminary determination on a water right permit or a change in appropriation right; providing for objections to be heard in an informal hearing; amending sections 85-2-102, 85-2-307, 85-2-308, 85-2-309, 85-2-310, and 85-2-804, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to

agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the

form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into

an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action

requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ Internal References to 85-2-102:

82-4-355x

85-2-141x

85-2-340x

85-2-506x}

Section 2. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application for permit or change in

appropriation right. (1) (a) Upon receipt of a correct and complete application for a permit or change in appropriation right, the department:

(i) may meet informally with the applicant to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(2) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

~~(2)~~(3) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

~~(3)~~(4) The requirements of subsections ~~(1)~~(2) and ~~(2)~~(3) do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

{ Internal References to 85-2-307:

85-2-102*x	85-2-308a	85-2-316*x	85-2-322x
85-2-363x	85-2-402x	85-2-436*x	85-2-436x
85-2-804a	85-20-401x	85-20-401x	85-20-401x
85-20-401x}			

Section 3. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under ~~85-2-307(2)~~ 85-2-307(3).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, and 85-2-436, if applicable, are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed

within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

{ Internal References to 85-2-308:

85-2-102x*	85-2-310x	85-2-316x*	85-2-363x*
85-2-408x	85-2-436x	85-2-436x	85-2-436*x}

Section 4. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311 or change ~~approval~~ in appropriation right under 85-2-402 states a valid objection, it shall hold a ~~contested case hearing, pursuant to Title 2, chapter 4, part 6,~~ on the objection within 60 days from the date set by the department for the filing of objections, hearing pursuant to 2-4-604 for the objector to show cause before the department as to why the permit or change in appropriation right should not be granted or should be granted with additional or different conditions after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The applicant shall participate in this hearing and retains the burden of proof on the applicable criteria. The department may consolidate hearings if more than

one objection is filed to an application. The department may allow for discovery. The department shall file in its records proof of the service by affidavit of the department. The department shall deny, or propose to grant with or without conditions a permit or change in appropriation right within 90 days after the administrative record is closed.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

{ Internal References to 85-2-309:

3-7-101x	3-7-223x	3-7-224x	3-7-224x
3-7-224x	3-7-501x	3-7-501x	3-7-501x

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3-7-502 x	85-2-102x*	85-2-316x	85-2-316x
85-2-322x	85-2-363x*	85-2-402x	85-2-436x}

Section 5. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. ~~(1) The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.~~

(1) If the department proposes to deny an application for a permit under 85-2-311 or change in appropriation right under 85-2-402, it shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation should not be denied. The department shall deny, or propose to grant with or without conditions a permit or change in appropriation right

within 90 days after the administrative record is closed. A proposal to grant an application must proceed as if the department proposed to grant the application in its preliminary determination pursuant to 85-2-307.

(2) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(3) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant, and the department preliminarily determined to grant the permit or change in appropriation right, the department may consider the proposed conditions and grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

~~(2)~~(4) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

~~(3) Except as provided in subsection (2), an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department, unless the applicant is first granted an opportunity to be heard. If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.~~

~~(4)~~(5) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

~~(5)~~(6) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or

does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection ~~(4)(c)(iii)~~ (6)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124."

{ Internal References to 85-2-310:

85-2-102x*

85-2-322x

85-2-363x*

85-2-401x

85-20-1401???compact???

Section 6. Section 85-2-804, MCA, is amended to read:

"85-2-804. Application -- notice -- objections -- hearing.

(1) Any appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the

public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) Any appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in ~~subsections (1) and (2)~~ of 85-2-307.

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state his name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state his name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing shall be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6."

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LC5020

{ *Internal References to 85-2-804: None.* }

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